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| 10/691,028      | 10/22/2003  | James Russell Curtis | 200314220-1         | 5010             |

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| EXAMINER |
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DAO, THUY CHAN

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2192

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|-------------------|---------------|
| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

04/16/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM  
ipa.mail@hp.com  
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|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/691,028 | <b>Applicant(s)</b><br>CURTIS ET AL. |  |
|                              | <b>Examiner</b><br>Thuy Dao          | <b>Art Unit</b><br>2192              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6, and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This action is responsive to the amendment filed on January 13, 2009.
2. Claims 1, 3-6 and 8-10 have been examined.

### Response to Amendments

3. In the instant amendment, claim 6 has been amended.
4. The 35 USC §101 rejection over claims 6 and 8-10 is withdrawn in view of Applicant's amendments.

### Response to Arguments

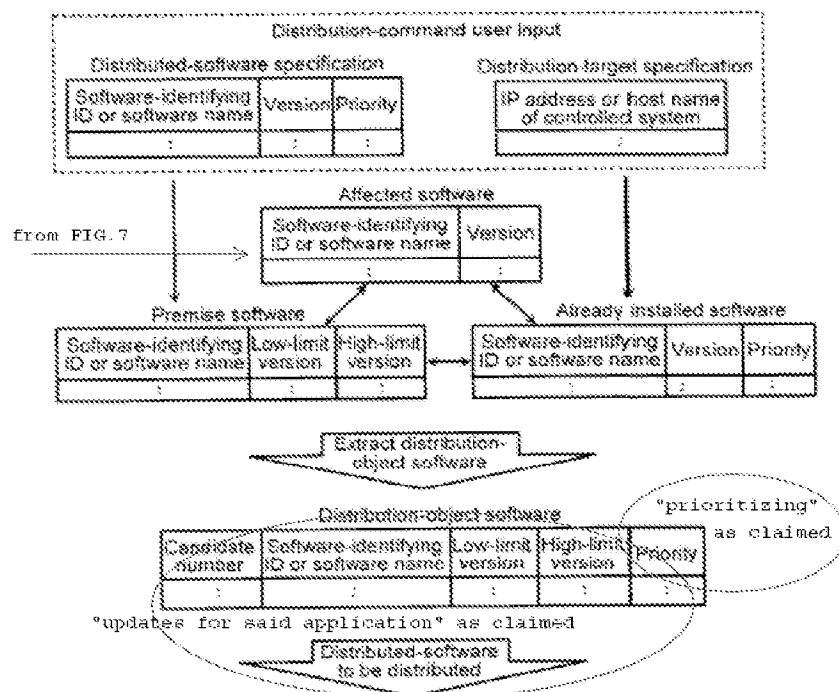
5. Applicants' arguments have been considered.

Limitations at issue "said update site prioritizing updates for said application at least in part as a function of said usage data" (e.g., claim 1, lines 8-9, claim 6, lines 8-9 and Remarks, pp. 4-6).

a) Sakanishi, FIG. 7, col.8: 29-42 and FIG. 12, col.9: 56 – col.10: 10.

The examiner respectfully disagrees with Applicants' assertions. FIG. 7 explicitly teaches Affected software

FIG.12



In FIG. 12, Sakanishi teaches comparing said Affected software with Premise software and Already installed software to generate a list of candidate software with priority levels, e.g.,

col.5: 27-32, “As an alternative, the priority level assigned to software to be distributed is compared with the priority level of already installed software to select software with the higher priority level and to determine whether or not to distribute the software to be distributed.”:

col.8: 16-28, “As shown in FIG. 6, the entry comprises pieces of information on a software-identifying ID 31, a version 32 and a priority level 33. The priority level 33 is compared with the priority level of software requested for distribution to determine whether or not to distribute the requested software. A control system can have an already-installed-software management table for each controlled system or, in order to reduce the checking-process load, a control system has only an already-installed-software management table common to all controlled systems wherein each entry of this table is associated with controlled systems completing installation of the piece of software represented by the entry.” (emphasis added).

b) Other errors of interpretation (Remarks, pp. 6-7):

The examiner respectfully disagrees with Applicants’ assertions. Sakanishi explicitly teaches:

*usage data* (e.g., FIG. 3, software information; FIG. 6, Already installed software with ID, version, priority levels);

*priority list* (e.g., FIG. 12, Extract distribution-object software table (“list”); Software to be distributed table (“list”)).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "'criticality' is determined as a function of usage data", Remarks, page 6) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Moshir explicitly teaches "launching an application on a user system" (e.g., FIG. 5, target computer 500, [0118]-[0121]; operating system, software and patches installed/launched/operated in said target computer 500, [0086]-[0092]). The examiner notes that the plain language of claims "a user system" does not exclude a Target Computer 500 in FIG. 5, whose usage data is monitored by Update Agent 508/Discovery Agent 548 and said usage data is sent to Update Server 528 to receive updated patches 556.

In conclusion, the examiner respectfully maintains ground of the 35 USC §103 rejection over claims 1, 3-6 and 8-10.

### **Claim Rejections – 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshir (art of record, US Patent No. 2004/0003266 A1) in view of Sakanishi (art of record, US Patent No. 6,678,888).

**Claim 1:**

Moshir discloses *a method comprising:*

*launching an application on a user system (e.g., FIG. 5, target computer 500, [0118]-[0121]; software and patches installed/launched in said target computer 500, [0086]-[0092]);*

*tracking usage of said application so as to generate usage data on said user system (e.g., [0010]-[0018]; FIG. 6, usage/software/hardware info 604-608, [0099]-[0100]);*

*accessing an update site from said user system (e.g., FIG. 2, update server 220, package computer 230; FIG. 5 and related text);*

*transferring said usage data from said user system to said update site (e.g., FIG. 8, blocks 812-820, [0096]-[0097]; FIG. 7, [0143]-[0146]);*

*said update site prioritizing updates for said application (e.g., [0149]-[0152], [0181]); and*

*said update site presenting to a user a list of said contents as prioritized in said prioritizing step (e.g., FIG. 6, block 706, [0144]-[0147]; FIG. 5, [0129], notification means 516, [0132]; [158] and [0187]).*

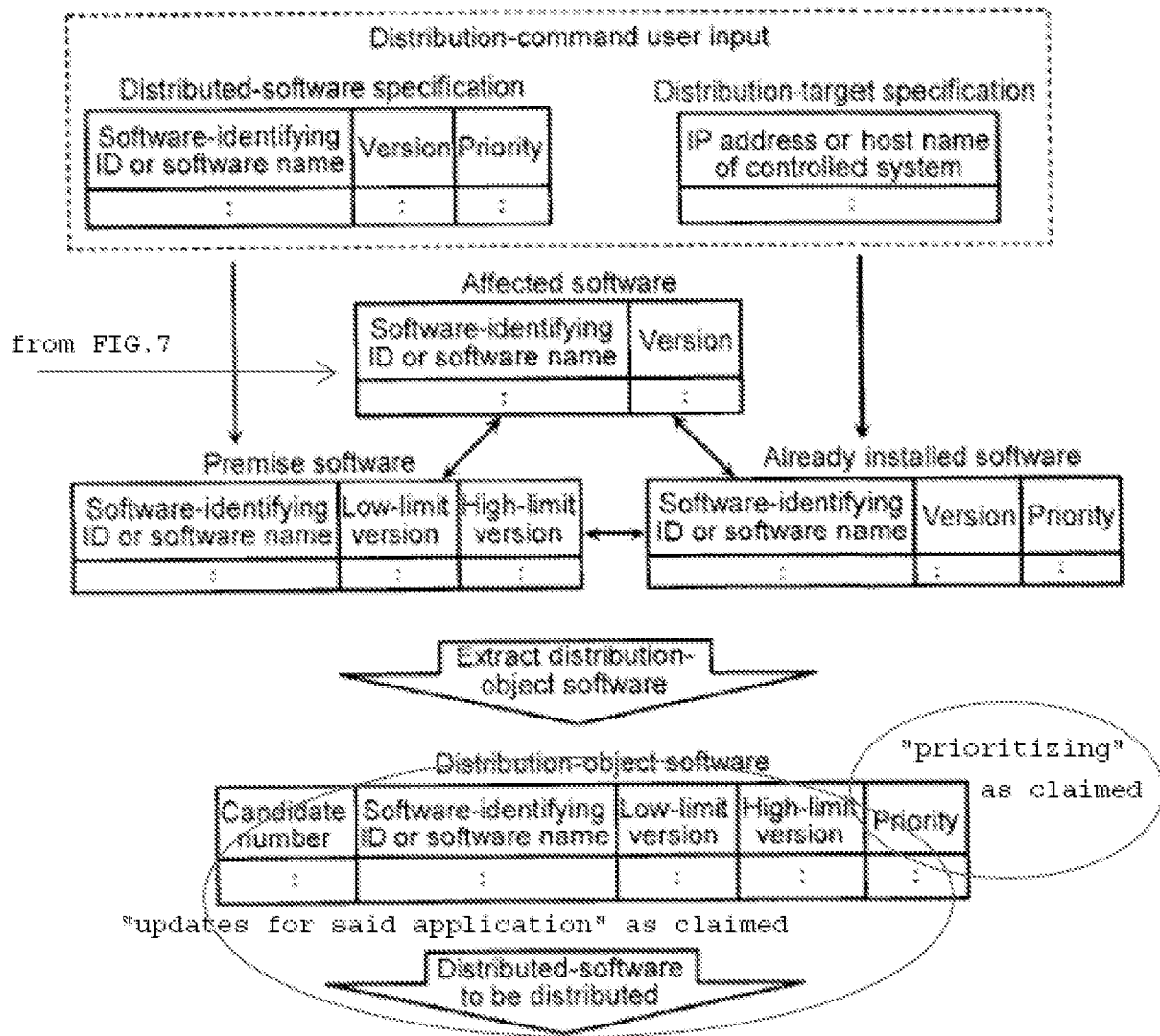
*Moshir does not explicitly disclose said update site prioritizing contents for said application at least in part as a function of said usage data.*

However, in an analogous art, Sakanishi further discloses:

*usage data (e.g., FIG. 3, col.7: 23-40, software information; FIG. 12, col.9: 56 – col.10: 10, usage data associated with Already installed software and IP address of host name);*

*said update site prioritizing updates for said application at least in part as a function of said usage data (e.g., FIG. 7 explicitly teaches Affected software.*

**FIG.12**



In FIG. 12, Sakanishi teaches comparing said Affected software with Premise software and Already installed software to generate a list of candidate software with priority levels, e.g.,

col.5: 27-32, "As an alternative, the priority level assigned to software to be distributed is compared with the priority level of already installed software to select software

with the higher priority level and to determine whether or not to distribute the software to be distributed.”;

col.8: 16-28, “As shown in FIG. 6, the entry comprises pieces of information on a software-identifying ID 31, a version 32 and a priority level 33. The priority level 33 is compared with the priority level of software requested for distribution to determine whether or not to distribute the requested software. A control system can have an already-installed-software management table for each controlled system or, in order to reduce the checking-process load, a control system has only an already-installed-software management table common to all controlled systems wherein each entry of this table is associated with controlled systems completing installation of the piece of software represented by the entry.” (emphasis added)); and

*said update site presenting to a user a list of said contents as prioritized in said prioritizing step* (e.g., FIG. 25-26, col.15: 32-64).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Sakanishi’s teaching into Moshir’s teaching. One would have been motivated to do so to efficiently handle software distribution as suggested by Sakanishi (e.g., col.3: 25-37).

**Claim 3:**

The rejection of claim 1 is incorporated. Moshir also discloses *said user selects one or more of said updates for said application* (e.g., [0158], [0187], [0189], [0191]).

**Claim 4:**

The rejection of claim 3 is incorporated. Moshir also discloses *said selected ones of said updates are installed so as to modify said application* (e.g., [0122]-[0127]).



**Claim 5:**

The rejection of claim 1 is incorporated. Moshir also discloses *further development of said application is directed in part as a function of said usage data (e.g., [0065]-[0070])*.

**Claim 6:**

Moshir discloses *a computer program product comprising computer-readable storage media encoded with a set of computer programs including:*

*a usage data evaluator for receiving and evaluating raw usage data received provided by a user computer system (e.g., [0010]-[0018]; FIG. 6, usage/software/hardware info 604-608, [0099]-[0100]);*

*regarding a version of a software application installed thereon (e.g., FIG. 5, target computer 500, [0118]-[0121]; software and patches installed/launched in said target computer 500, [0086]-[0092]);*

*said usage data evaluator providing evaluated usage data (e.g., FIG. 8, blocks 812-820, [0096]-[0097]; FIG. 7, [0143]-[0146]);*

*an update prioritizer for prioritizing updates available for said version (e.g., [0149]-[0152], [0181]);*

*a web interface for communicating with said user computer system via a browser on said user system as to present to a user of said computer system a list of said contents as prioritized by said prioritizer (e.g., FIG. 6, block 706, [0144]-[0147]; FIG. 5, [0129], notification means 516, [0132]; [158] and [0187]).*

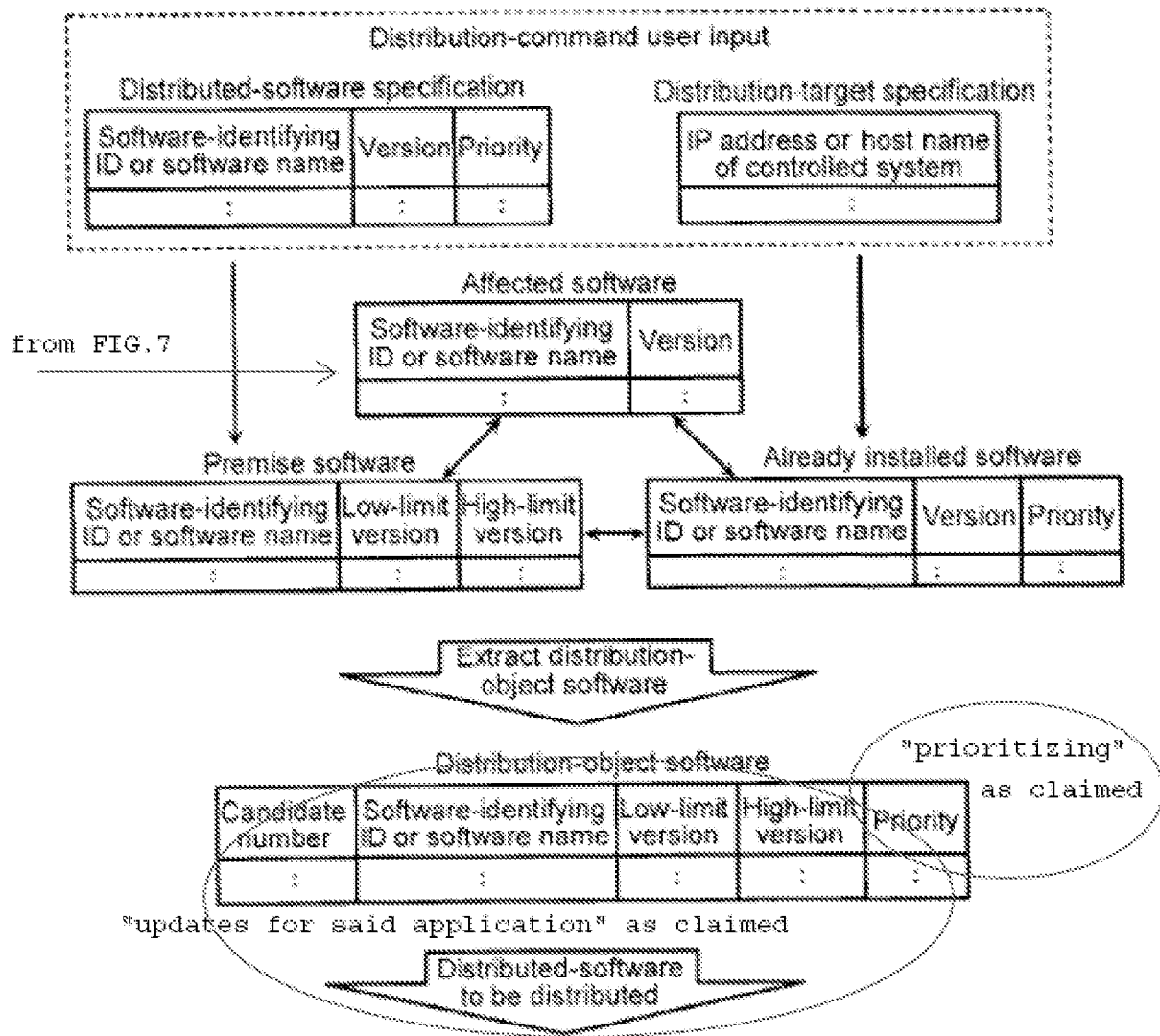
Moshir does not explicitly disclose *an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data*.

However, in an analogous art, Sakanishi further discloses:

*usage data (e.g., FIG. 3, col.7: 23-40; FIG. 12, col.9: 56 – col.10: 10);*

*an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data (e.g., FIG. 7 explicitly teaches Affected software.*

**FIG.12**



In FIG. 12, Sakanishi teaches comparing said Affected software with Premise software and Already installed software to generate a list of candidate software with priority levels, e.g.,

col.5: 27-32, "As an alternative, the priority level assigned to software to be distributed is compared with the priority level of already installed software to select software

with the higher priority level and to determine whether or not to distribute the software to be distributed.”;

col.8: 16-28, “As shown in FIG. 6, the entry comprises pieces of information on a software-identifying ID 31, a version 32 and a priority level 33. The priority level 33 is compared with the priority level of software requested for distribution to determine whether or not to distribute the requested software. A control system can have an already-installed-software management table for each controlled system or, in order to reduce the checking-process load, a control system has only an already-installed-software management table common to all controlled systems wherein each entry of this table is associated with controlled systems completing installation of the piece of software represented by the entry.” (emphasis added)); and

*a web interface for communicating with said user computer system via a browser on said user system as to present to a user of said computer system a list of said contents as prioritized by said prioritizer (e.g., FIG. 25-26, col.15: 32-64).*

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Sakanishi’s teaching into Moshir’s teaching. One would have been motivated to do so to efficiently handle software distribution as suggested by Sakanishi (e.g., col.3: 25-37).

**Claim 8:**

The rejection of claim 6 is incorporated. Moshir also discloses *said web interface specifies, for at least some of said updates, advantages over said version of said application* (e.g., [0019]-[0026]).

**Claim 9:**

The rejection of claim 6 is incorporated. Moshir also discloses *a usage-tracking module installed on said user computer system* (e.g., [0129]-[0132]).

**Claim 10:**

The rejection of claim 9 is incorporated. Moshir also discloses *said usage-tracking module is integrated with said version of said application* (e.g., FIG. 4, monitor module, [0078]-[0086]).

**Conclusion**

**8. THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication should be directed to examiner Thuy Dao (Twee), whose telephone/fax numbers are (571) 272 8570 and (571) 273 8570, respectively. The examiner can normally be reached on every Tuesday, Thursday, and Friday from 6:00AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam, can be reached at (571) 272 3695.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is (571) 272 2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Thuy Dao/  
Examiner, Art Unit 2192

/Tuan Q. Dam/  
Supervisory Patent Examiner, Art Unit 2192